

Item V:

1. D1: US-A-3 030 211 (MCDONALD CLARENCE E) 17 April 1962 (1962-04-17)
D2: US-A-4 834 991 (PORCELLO SAM J ET AL) 30 May 1989 (1989-05-30)
D3: US-A-4 711 788 (MANNS JAMES M ET AL) 8 December 1987 (1987-12-08)
D4: US-A-4 865 859 (PORCELLO SAMUEL J ET AL) 12 September 1989 (1989-09-12)
D5: EP-A-1 254 605 (ASAHI DENKA KOGYO KK) 6 November 2002 (2002-11-06)
D6: WO 03/024253 A (TNO ; DON JOHANNES ANDREAS CLYDE (NL); NOORT MARTIJN WILLEM-JAN (NL);) 27 March 2003 (2003-03-27)
D7: PATENT ABSTRACTS OF JAPAN vol. 1998, no. 12, 31 October 1998 (1998-10-31) & JP 10 179048 A (ASAMA KASEI KK), 7 July 1998 (1998-07-07)
2. None of the cited document discloses a composition comprising the combination of features concerning a lipid fraction as defined in claim 1 of the pending application and a wheat gluten fraction having a specific gliadin content. Therefore the requirements of novelty (Art. 33(2) PCT) are met.
3. The problem of the pending application was the provision of a cream filler composition having a reduced amount of saturated and of partially hydrogenated fats which retains consistency at room temperature and provides good organoleptic properties, which has good whipping and creaming properties and which has good shelf storage properties. D4 is regarded to represent the closest prior art as it also deals with filler creams and their organoleptic properties. D4 neither discloses the vegetable oil as defined in claim 1 of the pending application nor the combination with a gluten fraction having a specific gluten content. There was no hint in the prior art that the combination of said two features would solve the posed problem. Therefore the requirements of inventive step (Art. 33(3) EPC) are met.
4. The claims 1-3 are not clear with respect to the feature "having an increased gliadin content compared to the natural gliadin content in wheat gluten" as the natural gliadin content in wheat differs depending on the kind of wheat and the circumstances of growing. Therefore when comparing the gliadin content of two different kinds of wheat it is not clear whether a different gliadin content is due to an increased gliadin content or due to different natural gliadin contents. This objection could be overcome

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by the introduction of the feature of claim 7 into claims 1-3 and should be dealt with during the natural/regional phases.